

No. 625

The Embassy of the United States of America presents its compliments to the Department of Foreign Affairs and International Trade and has the honor to refer to the Northern Canada Vessel Traffic Services Zone Regulations (NORDREGs) which entered into effect on July 1, 2010.

The United States notes its support for the navigational safety and environmental protection objectives of NORDREGs and commends the Government of Canada for its efforts to promote the protection of the marine environment in the Arctic. As conditions in the Arctic continue to change and the volume of shipping traffic increases, Arctic coastal States need to consider ways to best protect and preserve this sensitive region.

The Government of the United States of America advises, however, that it continues to be concerned that the NORDREGs are inconsistent with important law of the sea principles related to navigational rights and freedoms and recommends that the Government of Canada submit its vessel traffic services and mandatory ship reporting system to the IMO for adoption.

Among our concerns, the NORDREGs purport to require Canadian permission for foreign flagged vessels to enter and transit certain areas that are within Canada's claimed exclusive economic zone and territorial sea and that enforcement action could include prosecution. In the view of the United States, this is not consistent with navigational rights and freedoms within the exclusive economic zone, the right of innocent passage within the territorial sea, and the right of transit passage through straits used for international navigation, all of which are bedrock principles of the law of the sea.

DIPLOMATIC NOTE

While Article 234 of the Law of the Sea Convention (the Convention) allows coastal states to adopt and enforce certain laws and regulations in ice-covered areas within the limits of their exclusive economic zones, these laws and regulations must be for the prevention, reduction and control of marine pollution from vessels and have "due regard to navigation." The United States does not believe that requiring permission to transit these areas meets the condition set forth in Article 234 of having due regard to navigation.

Additionally, the NORDREGs do not provide express exemptions for sovereign immune vessels from the applicability and enforcement of the final regulations. While the NORDREGs note that enforcement action would be consistent with international law, the United States wishes to note that, by virtue of Article 236 of the Convention, sovereign immune vessels are immune not only from enforcement of NORDREGs but also their applicability. The United States expects that this is a matter upon which our governments agree.

Finally, from a safety of navigation perspective, the United States has concerns about whether the NORDREGs vessel traffic services system is consistent with IMO guidance on the establishment of vessel traffic services.

In our view, measures like those contained in NORDREGs should be proposed to and adopted by the IMO to provide a solid legal foundation and broad international acceptance. The United States would welcome the opportunity to work with Canada and with others at the IMO on this matter.

The United States also reiterates its long-standing view that the Northwest Passage constitutes a strait used for international navigation. At a minimum, a measure such as the NORDREGs for an international strait would need to be proposed at and adopted by the IMO.

The United States noted with concern the references to "sovereignty" in the statements accompanying the announcement of the regulations. The United States wishes to note that the NORDREGs do not, and cannot as a matter of law, increase the "sovereignty" of Canada over any territory or marine area.

The Embassy of the United States of America avails itself of this opportunity to renew to the Department of Foreign Affairs and International Trade the assurances of its highest consideration.

Embassy of the United States of America

Ottawa, August 18, 2010.

